REMARKS

Claims 1-24 and 26-28 are pending in the application.

Claim Rejections – 35 U.S.C. § 103(a)

The Patent Office rejected claims 1-4, 7-10, 22, 23 and 28 under 35 U.S.C. 103(a) as being unpatentable over Cluts, U.S. Patent No. 5,616,876 ("Cluts"), and the article entitled Jukeboxes, published by PC Magazine in 1999 ("PC Magazine").

Applicant respectfully traverses. The present application allows a user to classify content as desired by the user. A user himself or herself may create new classifications, or may create conventional classifications in which the content filling the conventional classifications is selected by the user, not a content industry group or playlist publisher. Thus, the system disclosed in the present application may receive a criteria set including at least one user-defined classification or creating a tag for at least one piece of media content in accordance with a user-defined classification. For example, the system may receive a criteria set including an exercise classification defined by a user. The user may also tag content that he or she believes is suitable for exercise sessions with an exercise classification. Content may be compiled which is based upon the exercise classification and is within a desired time period, for example one hour. The compilation of content may include content suitable for exercise as selected by the user of duration of one hour.

Applicant respectfully submits that claims 1, 7 and 22 include novel and nonobvious elements. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Ryoka*, 180 U.S.P.Q. 580 (C.C.P.A. 1974). *See also In re Wilson*, 165 U.S.P.Q. 494 (C.C.P.A. 1970).

Independent claims 1, 7 and 22 include elements that have not been disclosed, taught, or suggested by the combination of Cluts and PC Magazine. For instance, Cluts and PC Magazine do not disclose, teach or suggest means for receiving a criteria set

including at least one user-defined classification. (Emphasis added). The Examiner cites Cluts at Col. 15, lines 26-31 and 47-55 to support the assertion that Cluts teaches receiving a criteria set including at least one user-defined classification, which state:

> In the preferred embodiment of the present invention, the style tables operate in the following manner. The audio on demand system operator creates an artist level default style table for all of the artists whose songs appear on the system. As mentioned above, the editor must determine which style categories to use and the weightings assigned to each artist. Therefore, the default style tables may include any number of style categories associated with any number of artists...
>
> ...Although the audio on demand system provides default style tables for all of the artists whose songs appear on the system, playlist publishers may wish to provide their own style tables that categorize artists in a different manner. For example, the default style tables may include a single category for rap music. However, rap music aficionados may prefer to further classify rap music into more precise subcategories, such as New York City rap, Los Angeles Rap, Male Rap, Female Rap, etc.

Emphasis added. These sections of Cluts are not referring to users, but to editors and "playlist publishers", who determine style categories and provide style tables for users. Cluts further describes classification by playlist publishers:

> The present invention allows playlist-specific style tables to be loaded into the system with each playlist. Therefore, playlist publishers may elect to use the default style tables, or may provide their own. Each playlist-specific style table may reclassify all of the artists whose music appears on the system, or only artists of particular interest. Thus, in the previous rap music example, a publisher of a rap music playlist may provide a style table that reclassifies those artists whose music appears in the rap playlist. In other words, a playlist publisher can recategorize the artists that are important to that publisher, and for which they want to make finer distinctions.

Emphasis added. (Cluts, Col. 15, lines 56-67). This portion of Cluts clearly describes the alteration of the playlists by publishers. Further, the playlist publishers referred to in Cluts are not individual users, but entities other than the users, as described in Col. 1, lines 53-56:

> An interactive network makes it possible for subscribers to have immediate access to vast selections of music. For example, record companies may provide catalogs of their music for subscribers to listen to via an interactive network. Similarly, various publishers may compile playlists of various styles of music (e.g., Jazz, Classical, Top 40, etc.) that will be available to subscribers via an interactive network.

Emphasis added. As a result, the user, in identifying a song to the system, is not defining a classification. Rather, classifications are predetermined by content industry groups or publishers who compile playlists. The system then attempts to locate the best fitting one of the pre-defined playlists created by these content industry groups or playlist publishers. This is not equivalent to receiving at least one user-defined classification, and as such, Cluts does not teach, disclose or suggest this element of claims 1,7, and 22.

The Patent Office further points to a "more like" function of Cluts whereby a subscriber uses a seed song (media) to identify other songs (user-defined classification) that are similar to the seed song to add new songs to a play list. (Office Action of December 8, 2004, Page 2). The Patent Office cites the abstract; Col. 2, lines 33-62; Col. 13, lines 63-67; Col. 14, lines 1-11; and Col. 16, lines 54-62 of Cluts for support of its assertion.

In the invention disclosed in Cluts, new classifications are not created by a user. Rather the system attempts to identify which pre-defined list may include an individual song identified by the user. The user does not generate a connection between a seed song and other songs. This function is performed by the system and the playlist publishers. For example, Cluts states that "The outcome of the "more like" function depends on the relationship between the number of styles in the style tables, the weighting scale, and the

position of the style slider when the "more like" function is activated." Emphasis added. (Cluts, Col. 16, lines 21-24).

Moreover, in Cluts, the selection of a seed song is not equivalent to receiving a criteria set including at least one user-defined classification. In Cluts, the "more like" function allows a subscriber to locate additional songs on the basis of subjective decisions that have been made regarding the styles of the songs (decisions made by someone other than the user). (Cluts, Col. 14, lines 19-25). In fact, Cluts states "the "more like" functions must find songs that most subscribers would agree are "similar" to the seed song." Emphasis added. (Cluts, Col. 14, lines 25-27).

PC Magazine discloses a similar method of song selection, wherein a user may select songs by up to three general pre-determined classes, such as artist, tempo, genre, mood or situation. Pre-determined playlists or categories are well known in the art. An advantageous aspect of the present invention is a criteria set of desired media content including at least one user-defined classification for at least one piece of media content. Emphasis added. This limitation is not taught, suggested or disclosed in either Cluts or PC Magazine. Consequently, under *In re Ryoka*, a *prima facie* case of obviousness has not been established for claims 1, 7, 13 and 22. Claims 2-6, 8-12, 14-21 and 23-28 are believed allowable due to their dependence upon an allowable base claim.

Claim Rejections – 35 U.S.C. § 103(a)

The Patent Office rejected claims 5, 6, 11, 12, and 24, 26 and 27 under 35 U.S.C. 103(a) as being unpatentable over Cluts/PC Magazine and R.W. Picard (Article entitled Affective Wearables, published in 1997) ("Picard").

Applicant respectively traverses the rejection of claims 5, 6, 11, 12, 24-27 Since claims 3, 5, 6, depend from claim 1, claims 11, and 12 depend from claim 7, and claims 24-27 depend from claim 22, claims 5, 6, 11, 12, 24-27 are believed allowable.

Allowable Subject Matter

The Patent Office stated claims 13-21 are allowed.

Thank you.

CONCLUSION

The application is respectfully submitted to be in condition for allowance. Accordingly, notification to that effect is earnestly solicited. In the event that issues arise in the application that may readily be resolved via telephone, the Examiner is kindly invited to contact the undersigned Attorney at (402) 496-0300.

Respectfully submitted,
Gateway, Inc.

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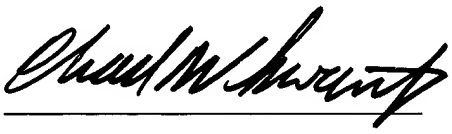

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